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**IN THE
COURT OF APPEALS OF INDIANA**

DAMIEN PACE-ANDERS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A04-0805-CR-292

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas Stefaniak, Jr., Judge
Cause No. 45G04-0710-MR-10

January 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Damien Pace-Anders appeals his conviction for murder.¹

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

In the evening of October 18, 2007, Terence Lunsford and Haywood Carpenter made plans to purchase marijuana “[i]n the 501 building,” an apartment building located at 501 Pennsylvania Street, Gary. (Tr. 140). From his grandmother’s house at 716 Pennsylvania Street, Carpenter telephoned Deon Powell to arrange the purchase of the marijuana. The telephone call took place at 7:43 p.m. and lasted thirty-eight seconds.

After speaking with Powell, Carpenter and Lunsford walked across Buffington Park, located between 7th and 6th Avenue on Pennsylvania Street, and went to the “501” building. (Tr. 144). As they approached the building, they observed a crowd of people, including Pace-Anders’ brother, Trenton, outside the building. Carpenter and Lunsford entered the building and made their purchase.

As they were leaving through the back door, Lunsford noticed Pace-Anders and Trenton driving toward them in a green sports utility vehicle. Lunsford knew the men “[f]rom drug dealing.” (Tr. 162). Pace-Anders was driving and his brother was in the front passenger’s seat. Pace-Anders “was driving with his right hand. He had [a] gun in

¹ Ind. Code § 35-42-1-1.

the left hand, . . . flashing it,” where Lunsford “could see it.” (Tr. 150). Lunsford warned Carpenter, who pushed Lunsford out of the way. Pace-Anders then exited the vehicle, “ran up to [Carpenter]” and fired two shots. (Tr. 152). Lunsford began to run upstairs. When he looked back, Lunsford saw Carpenter lying on the ground with Pace-Anders standing over him. Lunsford saw Pace-Anders shoot Carpenter “one more time.” (Tr. 155). As Lunsford continued running up the stairs, he heard three more shots.

Several residents of 501 Pennsylvania Street immediately telephoned 911 upon hearing the gun shots. Officers were dispatched to 501 Pennsylvania Street at approximately 7:53 p.m. Carpenter was pronounced dead at the hospital. An autopsy determined that he had been shot four times. An examination of the bullets, bullet casings, and bullet fragments revealed that Carpenter had been shot with one gun and that “there were six shots fired at the scene” (Tr. 415). The gun, however, was never recovered.

On October 19, 2007, Lunsford identified Pace-Anders and Trenton from a photo array. Police officers arrested Pace-Anders the same day. At the time of his arrest, he was driving a green Oldsmobile Bravada.

On October 20, 2007, the State charged Pace-Anders with murder. On November 1, 2007, Pace-Anders filed a notice of alibi, asserting that at the time of the shooting, he was at or going to a friend’s home or was at or going to Sporting Life Liquor Store.

The trial court commenced a four-day jury trial on March 10, 2008. Pace-Anders testified that on October 18, 2007, he left his home at approximately 7:30 p.m. and drove

to the home of Dolton Pippin. He further testified that he then left Pippin's home and drove to Sporting Life Liquor Store. According to his testimony, he arrived at the liquor store "a few minutes after 8:00 [p.m.]." (Tr. 745). Pace-Anders' wife testified that he left home at approximately 7:35 p.m.

Pace-Anders admitted to receiving and making several telephone calls on his cellular phone on October 18, 2007. Records obtained from his cellular phone provider indicated that he had made a two-second call at 7:49 p.m. and then received a forty-second telephone call at 7:53 p.m. Records further indicated that he used his cellular phone's "walkie-talkie" function at 7:46 p.m. for less than one second and then again at 7:54 p.m. for approximately thirty seconds. Based on signal transmissions to and from his cell phone, it was determined that Pace-Anders' cellular phone was in the vicinity of 501 Pennsylvania Street at the time of the shooting.

Pippin testified that on the day of the shooting, Pace-Anders came to his house between 7:45 p.m. and 8:00 p.m. Alene Walker testified that shortly before the shooting, she had seen Trenton and Pace-Anders at a park located at 6th Avenue and Pennsylvania Street, near 501 Pennsylvania Street.

The jury found Pace-Anders guilty of murder. On April 10, 2008, the trial court sentenced him to fifty-seven years.

DECISION

Pace-Anders asserts that the evidence was insufficient to support his conviction. Specifically, he argues that the State failed to disprove his alibi defense beyond a

reasonable doubt and that “[t]he only evidence that was presented to attempt to prove that [Pace-Anders] had shot [Carpenter] was [Lunsford], whose testimony was highly suspect and laced with inconsistencies.” Pace-Anders’ Br. at 5.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court’s ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Lunsford testified that he saw Pace-Anders shoot Carpenter. “It is well-established that ‘the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal.’” *Scott v. State*, 871 N.E.2d 341, 343 (Ind. Ct. App. 2007) (quoting *Toney v. State*, 715 N.E.2d 367, 369 (Ind. 1999)), *trans. denied*. However, when identification is the only evidence, the identification must be unequivocal. *Scott*, 871 N.E.2d at 344.

This interpretation is in accord with the “incredible dubiousity” rule, under which we will impinge upon the trier of fact’s responsibility to weigh the evidence only “where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant’s guilt.”

Id. at 344-45 (quoting *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994)).

In this case, Lunsford unequivocally identified Pace-Anders as the person who had shot Carpenter. We cannot say that his testimony was inherently dubious or inherently improbable. Pace-Anders' counsel cross-examined him, and the jury was able to independently evaluate his testimony. Thus, Pace-Anders' argument is nothing more than an invitation for us to judge Lunsford's credibility, which we decline to do.

Furthermore, the State presented evidence that Carpenter was shot at 501 Pennsylvania Street between 7:43 p.m.—when he had finished speaking with Powell—and 7:53 p.m.—when officers were dispatched to the scene. Cellular phone records indicated that Pace-Anders was in the area of 501 Pennsylvania Street when Carpenter was shot. Thus, there was circumstantial evidence of Pace-Anders' guilt.

Again, Pace-Anders is asking this Court to reweigh the evidence and judge Lunsford's credibility, which we will not do. The evidence presented at trial is sufficient to support his conviction.

Pace-Anders further claims that the State failed to disprove his alibi, where he testified that he was purchasing liquor at the time of Carpenter's murder; his wife testified that he was home on the night of the murder; and “[c]ell phone records were introduced which showed that [he] was on the cell phone talking when [Carpenter] was shot.” Pace-Anders' Br. at 5. “The State is not required to rebut directly a defendant's alibi but may disprove the alibi by proving its own case-in-chief beyond a reasonable doubt.” *Thompson v. State*, 728 N.E.2d 155, 159 (Ind. 2000), *reh'g denied*.

Pace-Anders' wife testified that he was home until approximately 7:35 p.m. on October 18, 2007. Pace-Anders testified that he arrived at the liquor store "a few minutes after 8:00[.]" (Tr. 745). Again, the State presented evidence that Carpenter was shot between 7:43 p.m. and 7:53 p.m. According to cellular phone records, Pace-Anders made a two-second call at 7:49 p.m. and did not receive or make any calls again until 7:53 p.m. He used his cellular phone's walkie-talkie function at 7:46 p.m. and did not use it again until 7:53 p.m. Given the evidence, we cannot say that the State failed to disprove Pace-Anders' alibi. In addition, the State presented sufficient evidence to permit the jury to reject the alibi.

Affirmed.

RILEY, J., and VAIDIK, J., concur.